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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KIMBERLY PULLMAN, on Behalf of Herself)
and All Others Similarly Situated and the
General Public,

Plaintiff,

vs.

HUNGRY MACHINE, INC., a Delaware
Corporation, d/b/a LIVINGSOCIAL.COM

Defendant.

Case No. **'11CV0846 LAB JMA**

COMPLAINT

CLASS ACTION

1. Violation of the Credit Card Accountability Responsibility and Disclosure Act and the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*;
2. Violation of the Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*;
3. Violation of the False Advertising Law, California Business and Professions Code § 17500 *et seq.*;
4. Violation of the Consumer Legal Remedies Act, California Civil Code § 1750 *et seq.*; and
5. Unjust Enrichment

DEMAND FOR JURY TRIAL

1 Plaintiff Kimberly Pullman (“Plaintiff” or “Plaintiff Pullman”), by and through her
2 attorneys, brings this action on behalf of herself and all others similarly situated against
3 Defendant Hungry Machine, Inc. d/b/a LivingSocial.com (“LivingSocial” or “Defendant”) for
4 compensatory damages and equitable, injunctive, and declaratory relief. Plaintiff hereby alleges,
5 on information and belief, except for information based on personal knowledge, which
6 allegations are likely to have evidentiary support after further investigation and discovery, as
7 follows:

8 **NATURE OF THE ACTION**

9 1. Plaintiff brings this action on behalf of herself and other similarly situated
10 consumers nationwide who purchased gift certificates for products and services from
11 LivingSocial. These gift certificates are sold and issued with expiration dates that are
12 deceptive and illegal under both federal and state laws.

13 2. LivingSocial is a web-based company that purports to offer discounted deals on
14 a wide variety of products and services, including restaurants and bars, salons and spas,
15 clothing and other retail items, and dance classes and other instructional lessons, among other
16 things.

17 3. LivingSocial’s business model is based on offering discounts to consumers en
18 masse by directly partnering with retail businesses that provide the products or services.
19 LivingSocial promises to increase the sales volume of its retail partners by sending out “Daily
20 Deal” e-mails to its massive subscription base (comprised of tens of millions of consumers
21 nationwide), highlighting and promoting the products and services of its retail partners.

22 4. LivingSocial and its retailer partners share in revenues from “Daily Deal” sales.
23 Once a consumer purchases a particular “Daily Deal,” LivingSocial charges the consumer the
24 advertised purchase amount and sends a confirmatory e-mail to each purchasing consumer with
25 a link to its website for downloading and printing the “livingsocial” gift certificate. The
26 consumer may then redeem the “livingsocial” gift certificate with the retail business offering
27 the product or service for a limited period of time.
28

1 5. LivingSocial partners with hundreds, if not thousands, of retail businesses
2 around the country.

3 6. The problem with LivingSocial's business model is that LivingSocial and its
4 retail partners, sell and issue "livingsocial" gift certificates with relatively short expiration
5 dates, knowing that many consumers will not use the gift certificates prior to the expiration
6 date. However, the Credit Card Accountability Responsibility and Disclosure Act ("CARD
7 Act") and the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693 *et seq.*, specifically
8 prohibit the sale and issuance of gift certificates, such as "livingsocial" gift certificates, with
9 expiration dates. Similarly, California Civil Code § 1749.5, prohibits the sale and issuance of
10 gift certificates with expiration dates.

11 7. LivingSocial's systematic placement of expiration dates on its gift certificates is
12 deceptive and harmful to consumers. LivingSocial effectively creates a sense of urgency
13 among consumers to quickly purchase "livingsocial" gift certificates by offering "Daily Deals"
14 for a short amount of time, usually a 24-hour period. Consumers therefore feel pressured and
15 are rushed into buying the gift certificates and unwittingly become subject to the onerous sales
16 conditions imposed by LivingSocial, including illegal expiration terms, which are relatively
17 short, often just a few months.

18 8. LivingSocial and its retail partners bank on the fact that consumers often will
19 not redeem "livingsocial" gift certificates before the limited expiration period – therefore,
20 many consumers are left with nothing, despite already having paid for the particular service or
21 product. Accordingly, LivingSocial and its retail partners reap a substantial windfall from the
22 sale of gift certificates that are not redeemed before expiration, which is precisely the type of
23 harmful business conduct that both Congress and the California State Legislature intended to
24 prohibit.

25 9. Plaintiff, like many unsuspecting consumers nationwide, fell victim to
26 LivingSocial's and its retail partners' deceptive and unlawful illegal conduct and purchased a
27 "livingsocial" gift certificate bearing an illegal expiration date.
28

1 (a) is authorized to conduct business in this District and has intentionally
 2 availed itself of the laws and markets within this District through the promotion, marketing,
 3 distribution and sale of “livingsocial” gift certificates in this District;

4 (b) does substantial business in this District; and

5 (c) is subject to personal jurisdiction in this District.

6 **PARTIES**

7 14. At all times relevant to this matter, Plaintiff Pullman, resided and continues to
 8 reside in San Diego, California. During the relevant time period, Plaintiff received offers for
 9 discounted products and services from LivingSocial and purchased a “livingsocial” gift
 10 certificate based on representations and claims made by LivingSocial. The “livingsocial” gift
 11 certificate purchased by Plaintiff contained an illegal expiration date.

12 15. Defendant Hungry Machine, Inc. d/b/a LivingSocial.com is a privately-held
 13 company incorporated under the laws of the state of Delaware. Defendant’s principal place of
 14 business is at 2719 M St. NW, Washington, D.C., 20007. Defendant is registered to do
 15 business in the state of California. Defendant markets, sells and issues its “livingsocial” gift
 16 certificates to millions of consumers throughout the United States, including hundreds of
 17 thousands of consumers in California and in San Diego County.

18 **FACTUAL ALLEGATIONS**

19 **A. LivingSocial’s Scheme to Sell and Issue Gift Certificates with 20 Illegal Expiration Dates**

21 16. LivingSocial originated as a Facebook developer specializing in “social apps”
 22 that let people organize, review, and discover books, music, movies, restaurants, video games,
 23 and beer. LivingSocial quickly gained popularity and, with backing from venture capital firm
 24 Grotech Ventures, it launched “LivingSocial Deals”—a “social commerce” website that
 25 promises consumers discounted deals on various products and services, purportedly through
 the power of “group buying.”

26 17. To take advantage of the deals offered by LivingSocial, consumers must sign-up
 27 and provide their e-mail address and certain other information to LivingSocial. Over 20
 28 million people worldwide have signed-up to receive offers from LivingSocial.

1 18. Every day, LivingSocial sends subscribers in each of the cities it operates a
2 “Daily Deal” e-mail, promoting the particular products or services of the retail businesses with
3 which it has partnered. LivingSocial sends targeted “Daily Deal” e-mails to over 150 cities
4 throughout the United States.

5 19. To arouse consumer interest and create the urgency to buy “livingsocial” gift
6 certificates, LivingSocial offers the “Daily Deal” for a limited amount of time, usually a 24-
7 hour period. This creates a “shopping frenzy” among consumers who feel pressured to
8 purchase “livingsocial” gift certificates as quickly as possible. Consumers purchase
9 “livingsocial” gift certificates directly through LivingSocial’s website, using their credit or
10 debit cards.

11 20. LivingSocial also uses electronic social media, such as Facebook and Twitter, to
12 promote and stoke demand for its “Daily Deals,” creating additional pressure among
13 consumers to buy “livingsocial” gift certificates before time runs out.

14 21. Once a consumer purchases a “livingsocial” gift certificate, LivingSocial sends
15 a confirmatory e-mail to purchasers with a link to its website, through which purchasers may
16 download and print their “livingsocial” gift certificates. Consumers may also purchase and
17 download “livingsocial” gift certificates directly to their mobile phones using an application
18 available on LivingSocial’s website. “LivingSocial” gift certificates thereafter may be directly
19 redeemed with the retail businesses offering the products and services.

20 22. LivingSocial imposes illegal expiration dates, among other onerous conditions,
21 on each “livingsocial” gift certificate it sells and issues, to the detriment of consumers. The
22 expiration periods on “livingsocial” gift certificates are frequently just a few months from the
23 date of purchase. LivingSocial knows that after it has driven consumers to purchase
24 “livingsocial” gift certificates as quickly as possible, many consumers ultimately will be unable
25 to redeem the gift certificates before the expiration period. For example, independently
26
27
28

1 conducted studies have recently estimated that between 20% and 30% of these gift certificate
2 are never used.¹

3 23. Accordingly, consumers often cannot take advantage and use the product or
4 service for which they paid before the expiration period imposed by LivingSocial – leaving a
5 substantial windfall for LivingSocial and its retail partners.

6 24. In addition to imposing illegal expiration periods, LivingSocial foists other
7 deceptive and unfair conditions on consumers. LivingSocial requires consumers to redeem
8 “livingsocial” gift certificates in the course of a single transaction. Consumers therefore are
9 forced to redeem their gift certificates all at once and cannot use their gift certificates for
10 multiple transactions or on multiple occasions. Likewise, consumers cannot redeem any
11 unused portion of “livingsocial” gift certificates for the cash amount. Moreover, LivingSocial
12 does not provide cash refunds to consumers when the retail business offering the services or
13 products refuses to honor the “livingsocial” gift certificate. LivingSocial essentially places
14 handcuffs on the manner in which consumers can redeem their gift certificates for the products
15 and services offered, even though consumers have already paid in full for such products and
16 services.

17 **B. LivingSocial’s Retail Business Partners Agree to Sell Gift**
18 **Certificates with Illegal Expiration Dates**

19 25. LivingSocial focuses on two markets – the consumers who wish to obtain the
20 advertised products or services by purchasing “livingsocial” gift certificates, and the retail
21 businesses who partner with LivingSocial to promote their products and services. These retail
22 businesses are willing to partner with LivingSocial and offer their products and services at a
23 discount because LivingSocial promises to promote their products and services to its huge
24 subscription base and guarantees them a specified volume of business. In fact, LivingSocial
25 promises its retail partners that on the day of the local retailer’s promotion “thousands of

26 ¹ See Beth Teitell, *You don’t have to ‘eat’ expired coupon deals* (March 13, 2011),
27 [http://www.charlotteobserver.com/2011/03/13/2134235/you-dont-have-to-eat-expired-](http://www.charlotteobserver.com/2011/03/13/2134235/you-dont-have-to-eat-expired-coupon.html)
28 [coupon.html](http://www.charlotteobserver.com/2011/03/13/2134235/you-dont-have-to-eat-expired-coupon.html)

1 excited readers will open their email to read about [the retail business's] offering—many of
2 them buying on the spot.”

3 26. LivingSocial partners with both local businesses and large, nationwide
4 companies. LivingSocial's business model, particularly its ability to establish partnerships
5 with retail businesses, depends in large part on its systematic use of illegal expiration dates.
6 LivingSocial knows that its retail partners are not willing to offer their products and services at
7 a discount to consumers through the sale of “livingsocial” gift certificates, without an
8 agreement to limit the time period for which consumers can redeem the gift certificates.
9 Accordingly, LivingSocial and its retail partners, continue to flaunt the law by imposing illegal
10 expiration dates on the “livingsocial” gift certificates sold to consumers.

11 27. LivingSocial attempts to circumvent federal and state gift certificate laws by
12 inserting a disclaimer, titled “The Fine Print,” which is buried at the bottom of “livingsocial”
13 gift certificates in tiny, barely legible font that is readily overlooked by consumers.
14 LivingSocial's disclaimer states:

15 If the state or province where the merchant is located prohibits
16 earlier termination, then the amount you paid for the voucher will
17 expire five (5) years from the date the voucher is issued. The
18 prepaid portion of the voucher will not expire in states and
19 provinces where it is prohibited by law.

20 28. Moreover, the disclaimer does not excuse nor justify LivingSocial's use of
21 illegal expiration periods. As set forth below, LivingSocial's imposition of expiration dates on
22 “livingsocial” gift certificates constitutes *per se* violations of federal and state laws, for which
23 there is no applicable exception.

24 29. In any event, once “livingsocial” gift certificates reach their illegal expiration
25 periods, LivingSocial refuses to honor the bargain originally struck between the parties.

26 30. LivingSocial reaps massive profits from this business model. LivingSocial
27 typically takes for itself a “commission fee for use of the [LivingSocial] platform”—ranging
28 from 30% to 50%—on the sale of each “livingsocial” gift certificate. LivingSocial's retail
partners also profit from the influx of new customers and bolstered sales that result from the

1 sale of “livingsocial” gift certificates. But again, LivingSocial’s and its retail partners’ undue
 2 profits are based in large part on their use of illegal expiration periods on the gift certificates
 3 sold to consumers.

4 **C. Plaintiff Pullman’s Purchase of a LivingSocial Gift Certificate**
 5 **with an Illegal Expiration Date**

6 31. On or about September 24, 2010 Plaintiff Pullman received a “Daily Deal” e-
 7 mail offer from LivingSocial for a “livingsocial” gift certificate. *See* Exhibit A.

8 32. The e-mail sent to Plaintiff contained a hyperlink to LivingSocial’s website.
 9 Under the terms of the “Daily Deal” offer, as set forth on LivingSocial’s website, Plaintiff
 10 paid \$15 to LivingSocial in exchange for a “livingsocial” gift certificate redeemable for \$30
 11 worth of food and drink at Bare Back Grill in San Diego, California.

12 33. “The Fine Print” section of the “Daily Deal” offer stated that the “livingsocial”
 13 gift certificate’s “Promotional value expires on March 27, 2011.” “The Fine Print” section also
 14 imposed the following conditions:

15 Limit 1 per person per visit • Not valid during happy hour • Dine-
 16 in only (not valid for takeout or delivery) • Other conditions apply
 • Promotional value expires on March 27, 2011

17 Except where noted in the Fine Print:

- 18 • No cash value/cash back
- 19 • Tax and gratuity are not included
- 20 • Entire value must be used in one visit
- 21 • Cannot be combined with any other offer or promotion
- 22 • Living Social Terms and Conditions –
 livingsocial.com/terms

23 34. In even smaller text (approximately size 6-font), the “livingsocial” gift
 24 certificate states the following:

25 If the state or province where the merchant is located prohibits
 26 earlier termination, then the amount you paid for the voucher will
 27 expire five (5) years from the date the voucher is issued. The
 28 prepaid portion of the voucher will not expire in states and
 provinces where it is prohibited by law.

35. Plaintiff subsequently received an e-mail from LivingSocial confirming her
 purchase of the “livingsocial” gift certificate. The e-mail contained a link to LivingSocial’s
 website from which Plaintiff could download and print the “livingsocial” gift certificate.

1 36. Plaintiff was unable to redeem the “livingsocial” gift certificate before the
2 March 27, 2011 expiration period imposed by LivingSocial.

3 **CLASS ACTION ALLEGATIONS**

4 37. Plaintiff brings this action on behalf of herself and all those similarly situated
5 pursuant to Rule 23(a) and (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

6 38. Plaintiff seeks certification of the following Class:

7 All persons in the United States who purchased or otherwise acquired a
8 “livingsocial” gift certificate issued by LivingSocial with an expiration date that is
9 earlier than the expiration period provided under applicable federal and state laws.

10 Specifically excluded from the Class are LivingSocial’s officers, directors
11 or employees, any entity in which LivingSocial has a controlling interest, and any
12 of LivingSocial’s affiliates, legal representatives, heirs, or assigns. Plaintiff
13 reserves her right to amend the Class definition if discovery and further
14 investigation reveal that the Class should be expanded or otherwise modified.

15 39. ***Numerosity.*** The Class is comprised of millions of consumers throughout
16 California and the United States. The Class is so numerous that joinder of all members of the
17 Class is impracticable.

18 40. ***Commonality.*** As outlined below, common questions of law and fact exist as to
19 all members of the Class. Additionally, common questions of fact and law exist because
20 Plaintiff and all Class Members purchased “livingsocial” gift certificates under a standardized,
21 uniform, and systematic purchasing process implemented by LivingSocial.

22 41. ***Adequacy of Representation.*** Plaintiff will fairly and adequately protect the
23 interests of the members of the Class because it is in her best interest to prosecute the claims
24 alleged herein to obtain full compensation due to her for the unfair and illegal conduct of
25 which she complains. Plaintiff has retained highly competent counsel and experienced class
26 action attorneys to represent her interests and that of the Class. Plaintiff and her counsel have
27 the necessary financial resources to adequately and vigorously litigate this class action.
28 Plaintiff has no adverse or antagonistic interests to those of the Class. Plaintiff is willing and

1 prepared to serve the Court and the Class members in a representative capacity with all of the
 2 obligations and duties material thereto and is determined to diligently discharge those duties by
 3 vigorously seeking the maximum possible recovery for Class members.

4 42. **Typicality.** Plaintiff's claims are typical of the claims of the members of the
 5 Class because she purchased the "livingsocial" gift certificate from LivingSocial in a typical
 6 retail consumer process and the "livingsocial" gift certificate had an expiration date. Thus,
 7 Plaintiff and Class members sustained the same damages arising out of LivingSocial's
 8 common course of conduct in violation of law as complained of herein. The damages of each
 9 Class member were caused directly by LivingSocial's wrongful conduct in violation of law as
 10 alleged herein.

11 43. Adequate notice can be given to Class members directly using information
 12 maintained in LivingSocial's records or through notice by publication.

13 **Rule 23(b)(3)**

14 44. This action is appropriate as a class action pursuant to Rule 23(b)(3) of the
 15 Federal Rules of Civil Procedure.

16 45. ***Existence and Predominance of Common Questions of Law and Fact.***
 17 Common questions of law and fact exist as to all members of the Class and predominate over
 18 any questions affecting only individual Class members. These common legal and factual
 19 questions include, but are not limited to, the following:

- 20 (a) Whether LivingSocial sold and issued "livingsocial" gift certificates
 21 subject to expiration dates;
- 22 (b) Whether LivingSocial's imposition of expiration dates on "livingsocial"
 23 gift certificates violates federal laws, California state laws, and/or similar
 24 laws in other states;
- 25 (c) Whether LivingSocial engaged in deceptive and unfair business and trade
 26 practices related to the imposition of expiration dates on "livingsocial" gift
 27 certificates and other onerous terms and conditions;

1 (d) Whether Plaintiff and Class members are entitled to declaratory, injunctive
2 and/or equitable relief; and

3 (e) Whether Plaintiff and Class members are entitled to compensatory
4 damages, including actual and statutory damages plus interest thereon.

5 46. ***Superiority.*** A class action is superior to other available means for the fair and
6 efficient adjudication of this controversy since individual joinder of all Class members is
7 impracticable. Class action treatment will permit a large number of similarly situated persons
8 to prosecute their common claims in a single forum simultaneously, efficiently and without the
9 unnecessary duplication of effort and expense that numerous actions would engender.
10 Furthermore, the expenses and burden of individual litigants and the lack of knowledge of
11 Class members regarding LivingSocial's activities, would make it difficult or impossible for
12 individual Class members to redress the wrongs done to them, while an important public
13 interest will be served by addressing the matter as a class action. The cost to the court system
14 of adjudication of such individualized litigation would be substantial. The trial and litigation
15 of Plaintiff's claims will be manageable.

16 47. Plaintiff is unaware of any difficulties that are likely to be encountered in the
17 management of this Class Action Complaint that would preclude its maintenance as a class
18 action.

19 **Rule 23(b)(2)**

20 48. This action is also appropriate as a class action pursuant to Rule 23(b)(2) of the
21 Federal Rules of Civil Procedure.

22 49. Plaintiff also seeks injunctive and corresponding declaratory and incidental
23 monetary relief for the entire Class. LivingSocial acted in a manner generally applicable to the
24 entire Class by selling and/or issuing "livingsocial" gift certificates with illegal expiration
25 dates.

26 50. LivingSocial's wrongful conduct and practice to unlawfully sell and/or issue
27 "livingsocial" gift certificates, if not enjoined, will subject Class members to enormous
28

1 continuing future harm and will cause irreparable injuries to Class members who are misled
2 and denied their rights.

3 51. Plaintiff also seeks preliminary injunctive relief to enjoin LivingSocial from
4 selling and/or issuing “livingsocial” gift certificates with illegal expiration dates. LivingSocial
5 sells thousands of “livingsocial” gift certificates *daily* and each sale increases the odds that
6 consumers will fail to redeem their “livingsocial” gift certificates before the illegal expiration
7 date. The result is that LivingSocial enjoys a substantial windfall at the expense of Plaintiff,
8 Class members, and consumers nationwide.

9 52. The monetary relief sought on behalf of the Class to remedy LivingSocial’s
10 wrongful conduct flows directly from LivingSocial’s liability to the Class as a whole and can
11 be objectively determined. The loss of monies by Class members can be mathematically
12 quantified and does not depend on any subjective assumptions or idiosyncrasies that are
13 particular to individual Class members. Damages may be calculated from the sales records in
14 LivingSocial’s possession, so that the cost of administering a recovery for the Class can be
15 minimized. Importantly, the precise amount of damages available to Plaintiff and other
16 members of the Class is not a barrier to class certification.

17 **COUNT I**

18 **Violations of the Credit Card Accountability Responsibility and Disclosure** 19 **Act and Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, on Behalf of** 20 **Plaintiff and All Class Members Against LivingSocial**

21 53. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
22 Class Action Complaint as if set forth herein.

23 54. The CARD Act, which amends the EFTA, prohibits the sale or issuance of gift
24 certificates that feature and are subject to expiration dates.

25 55. LivingSocial sold and issued and/or agreed to sell and issue “livingsocial” gift
26 certificates, which are “gift certificates” as defined under 15 U.S.C. § 16931-1(a)(2)(B).
27 “Livingsocial” gift certificates constitute promises that are: (a) redeemable at a single merchant
28 or an affiliated group of merchants; (b) issued in a specified amount that may not be increased

1 or reloaded; (c) purchased on a prepaid basis in exchange for payment; and (d) honored upon
 2 presentation by such single merchant or affiliated group of merchants for goods or services.

3 56. At all relevant times, “livingsocial” gift certificates were sold and issued to
 4 consumers through electronic fund transfer systems established, facilitated and monitored by
 5 LivingSocial.

6 57. “LivingSocial” gift certificates are not exclusively issued in paper form, as
 7 LivingSocial provides an e-mail link to consumers to download and print such gift certificates.
 8 Moreover, consumers may download “livingsocial” gift certificates to their mobile phones
 9 through an application available on LivingSocial’s website.

10 58. “LivingSocial” gift certificates are marketed and sold to the general public and
 11 are not issued as part of any loyalty, award, or promotional program.

12 59. LivingSocial violated the CARD Act and EFTA by selling and issuing and/or
 13 agreeing to sell and issue “livingsocial” gift certificates with expiration dates, which is plainly
 14 prohibited under § 1693l-1(a)(2)(B) and § 1693l-1(c)(1).

15 60. As a direct and proximate result of LivingSocial’s unlawful acts and conduct,
 16 Plaintiff and Class members were deprived of the use of their money that was charged and
 17 collected by LivingSocial through the sale of “livingsocial” gift certificates with illegal
 18 expiration dates.

19 61. Pursuant to 15 U.S.C. § 1693m, Plaintiff, on behalf of herself and the Class,
 20 seeks a Court order for actual and statutory damages to be determined by the court, injunctive
 21 relief, as well as reasonable attorneys’ fees and the cost of this action.

22 COUNT II

23 **Violations of California Business & Professions Code § 17200 *et seq.*, on** 24 **Behalf of Plaintiff and Class Members Who Reside in California Against** **LivingSocial**

25 62. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
 26 Class Action Complaint as if set forth herein.
 27
 28

1 63. Section 17200 of the California Business & Professions Code (“Unfair
2 Competition Law” or “UCL”) prohibits any “unlawful,” “unfair” and “fraudulent” business
3 practice.

4 64. Section 17200 specifically prohibits any “*unlawful* ... business act or practice.”
5 LivingSocial violates § 17200’s prohibition against engaging in an unlawful act or practice by,
6 *inter alia*, selling and issuing and/or agreeing to sell and issue “livingsocial” gift certificates
7 that feature and are subject to expiration dates that are prohibited under both federal law,
8 California state laws, and similar laws in other states.

9 65. As discussed above, LivingSocial’s ongoing sale and issuance of gift certificates
10 with expiration dates violates the CARD Act and EFTA, 15 U.S.C. § 1693 *et seq.*

11 66. LivingSocial also violates California’s gift certificate laws, Cal. Civ. Code
12 §1749.5, and the CLRA, §1750 *et seq.*, and similar laws in other states by selling and issuing
13 and/or agreeing to sell and issue “livingsocial” gift certificates with expiration dates. Plaintiff
14 and Class members reserve their right to allege other violations of law which constitute other
15 unlawful business acts or practices, as further investigation and discovery warrants. Such
16 conduct is ongoing and continues to this date.

17 67. “Livingsocial” gift certificates are marketed and sold to the general public and
18 are *not* “distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional
19 program without any money or other thing of value being given in exchange for the gift
20 certificate.” Cal. Civ. Code §1749.5(d)(1). In addition, “livingsocial” gift certificates are
21 marketed and sold to the general public and are not “donated or sold below face value at a
22 volume discount to employers or to nonprofit and charitable organizations for fundraising
23 purposes.” Cal. Civ. Code §1749.5(d)(2).

24 68. Section 17200 also prohibits any “*unfair* . . . business act or practice.” As
25 described in the preceding paragraphs, LivingSocial engaged in the unfair business practice of
26 selling and issuing “livingsocial” gift certificates with illegal and deceptive expiration dates.

69. LivingSocial, with the approval and agreement of its retail business partners, imposed other unfair conditions on its “livingsocial” gift certificates, including forcing consumers to redeem the gift certificates in the course of a single transaction and not providing for the exchange of any unused portion of the gift certificates for their cash value. LivingSocial also unfairly limits consumers from using more than one “livingsocial” gift certificate during each visit to the retail business offering the particular product or service.

70. Moreover, based on information and belief, LivingSocial does not provide cash refunds to consumers when the retail business offering the product or service refuses to honor the “livingsocial” gift certificate.

71. LivingSocial’s business practices, as detailed above, are unethical, oppressive and unscrupulous, and they violate fundamental policies of this State. Further, any justifications for LivingSocial’s wrongful conduct is outweighed by the adverse effects of such conduct. Thus, LivingSocial engaged in unfair business practices prohibited by California Business & Professions Code § 17200 *et seq.*

72. Section 17200 also prohibits any “*fraudulent business act or practice.*” LivingSocial violated this prong of the UCL by disseminating and/or agreeing to disseminate, through LivingSocial’s website and other promotional channels, misleading and partial statements about “livingsocial” gift certificates that have a tendency to mislead the public. Further, LivingSocial violated this prong of the UCL by omitting material information about “livingsocial” gift certificates with the intent to induce reliance by consumers to purchase such gift certificates. LivingSocial’s claims, nondisclosures and misleading statements concerning “livingsocial” gift certificates, as more fully set forth above, were false, misleading and/or likely to deceive the consuming public within the meaning of California Business and Professions Code § 17200.

73. Section 17200 also prohibits any “*unfair, deceptive, untrue or misleading advertising.*” For the reasons set forth above, LivingSocial engaged in unfair, deceptive,

1 untrue and misleading advertising in violation of California Business & Professions Code §
2 17200.

3 74. LivingSocial's conduct caused and continues to cause substantial injury to
4 Plaintiff and other Class members. Plaintiff has suffered injury in fact and lost money as a
5 result of LivingSocial's unfair conduct.

6 75. Pursuant to California Business & Professions Code § 17203, Plaintiff seeks an
7 order requiring LivingSocial to immediately cease such acts of unlawful, unfair and fraudulent
8 business practices and requiring LivingSocial to return the full amount of money improperly
9 collected to all those who have paid it.

10 **COUNT III**

11 **False and Misleading Advertising in Violation of California Business & 12 Professions Code § 17500 *et seq.*, on Behalf of Plaintiff and Class Members Who Reside in California Against LivingSocial**

13 76. Plaintiff repeats and re-alleges each and every allegation contained above as if
14 set forth herein.

15 77. California Business & Professions Code § 17500 *et seq.* prohibits various
16 deceptive practices in connection with the dissemination in any manner of representations
17 which are likely to deceive members of the public to purchase products and services such as
18 the "livingsocial" gift certificates offered by LivingSocial.

19 78. LivingSocial's acts and practices as described herein have deceived and/or are
20 likely to deceive Plaintiff and Class members. LivingSocial uses its website and targeted
21 "Daily Deal" promotions, along with other social media, such as Facebook and Twitter, to
22 extensively market and advertise the gift certificates with misleading and illegal expiration
23 dates and other deceptive terms to consumers.

24 79. By its actions, LivingSocial has been and is disseminating uniform advertising
25 concerning "livingsocial" gift certificates, which by its nature is unfair, deceptive, untrue, or
26 misleading within the meaning of California Business & Professions Code § 17500 *et seq.*
27 Such advertisements are likely to deceive, and continue to deceive, the consuming public for
28 the reasons detailed above.

1 (7) LivingSocial misrepresented that “livingsocial” gift certificates are
2 of a particular standard, quality and/or grade, when they are of
3 another;

4 (9) LivingSocial’s acts and practices constitute the advertisement of
5 goods, without the intent to sell them as advertised;

6 (14) LivingSocial’s acts and practices fail to represent that the
7 transaction involving “livingsocial” gift certificates confers or
8 involves obligations that are prohibited by law, particularly the
9 imposition of illegal expiration dates and other onerous sales
10 terms;

11 (16) LivingSocial’s acts and practices constitute representations that
12 “livingsocial” gift certificates have been supplied in accordance
13 with previous representations when they have not; and

14 (19) LivingSocial inserted unconscionable provisions in the contract for
15 the purchase of gift certificates, specifically illegal expiration dates
16 and other onerous, one-sided restrictions as to the gift certificates’
17 use and redemption.

18 86. By reason of the foregoing, Plaintiff and the Class haven been irreparably
19 harmed, entitling them to injunctive relief, disgorgement and restitution.

20 87. Pursuant to § 1782 of the CLRA, by letter dated April 20, 2011, Plaintiff
21 notified LivingSocial in writing of the particular violations of § 1770 of the CLRA and
22 demanded LivingSocial rectify the actions described above by providing complete monetary
23 relief, agreeing to be bound by its legal obligation and to give notice to all affected customers
24 of its intent to do so. Plaintiff sent this notice by certified mail, return receipt requested, to
25 LivingSocial’s principal place of business. A copy of the letter dated April 20, 2011, is
26 attached as Exhibit B.

1 H. For pre-judgment and post-judgment interest at the legal rate; and

2 I. For such other and further relief as the Court deems just and proper.

3
4 **JURY DEMAND**

5 Plaintiff demands a trial by jury on all issues so triable.

6 DATED: April 21, 2011

7 BONNETT, FAIRBOURN, FRIEDMAN
8 & BALINT, P.C.
9 ANDREW S. FRIEDMAN
10 ELAINE A. RYAN
11 PATRICIA N. SYVERSON (203111)

12 s/Patricia N. Syverson

Patricia N. Syverson

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24 Attorneys for Plaintiff
25
26
27
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

KIMBERLY PULLMAN, on behalf of herself and all others similarly situated and the general public

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Bonnett Fairbourn Friedman & Balint, 2901 N. Central Ave., #1000,
Phoenix, AZ 85012, 602-274-1100

DEFENDANTS

HUNGRY MACHINE, INC., d/b/a LIVINGSOCIAL.COM

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV0846 LAB JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|--|
| Citizen of This State | PTF <input checked="" type="checkbox"/> DEF <input checked="" type="checkbox"/> | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> DEF <input type="checkbox"/> |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER/STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Violation of credit card accountability responsibility and disclosure act; Unfair Competition

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/21/2011

SIGNATURE OF ATTORNEY OF RECORD

/s/ Patricia N. Syverson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____